

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
NOVEMBER 10, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:32 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Vic Peterson, Building Official; Paul Adams, Parks and Recreation Director; Brad Davis, Interim Emergency Services Coordinator; Thomas Gorham, Senior Planning Consultant; Mike Teruya, Planning Manager; Paul Huckabee, Planning Consultant; and Lisa Pope, City Clerk

FLAG SALUTE

Paul Grisante led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in closed session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410

3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641
Related cases (city named as a party in interest):
 - a. Rick Appel v. California Coastal Commission
Case No. SC074658
 - b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
 - c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
 - d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
 - e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
 - f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
 - g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
 - h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
6. Colony Beach Preservation Association v. California Coastal Commission
Los Angeles County Superior Court Case No. BS083683
7. Malibu CAN v. City of Malibu (MBC Development Agreement)
Los Angeles County Superior Court Case No. BS083683
8. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Amicus)
10. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
11. Sierra Club v. City of Malibu (Forge Lodge)
Los Angeles County Superior Court Case No. BS083573
12. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
13. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
14. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
15. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
16. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu

- Los Angeles County Superior Court Case No. BS072794
17. Trancas Property Owners Association v. City of Malibu
Los Angeles County Superior Court Case No. BS084112
18. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
19. Visher v. City of Malibu
Los Angeles County Superior Court Case No. SC078703

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

20. Number of Cases: 2

Conference with Labor Negotiators pursuant to Government Code Section 54957.6

21. Unrepresented Employee: Administrative Services Director
Agency Negotiator: City Manager
22. Unrepresented Employee: Parks and Recreation Director
Agency Negotiator: City Manager

City Attorney Hogin indicated that the Council discussed some, but not all of the items listed on the Closed Session Agenda, and took no reportable actions except in the matter of City of Malibu v. California Coastal Commission, / TLC / Liebig (Referendum), Los Angeles County Superior Court Case No. SS011355. She reported that the Council unanimously voted to authorize the City Attorney's Office to appeal the court's ruling on attorney's fees for Taxpayers for Livable Communities in the case in which they intervened.

APPROVAL OF AGENDA

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the agenda. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on October 31, 2003, with the Amended Agenda posted on November 7, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

- A. Proclamation Recognizing the 25th Anniversary of the Santa Monica Mountains National Recreation Area

Mayor Kearsley read the proclamation recognizing the 25th Anniversary of the Santa Monica Mountains National Recreation Area. Woody Smeck, National Park Service, thanked the Council for its recognition.

B. Recognition of Community Emergency Response Team (CERT) Graduates and Coffee Bean and Tea Leaf Store #9 (Malibu) for their support of the City of Malibu's Community Emergency Response Team

Mayor Kearsley presented a certificate of recognition to Coffee Bean and Tea Leaf, Store #9 for providing tea and coffee during the CERT training classes.

Mayor Kearsley presented certificates to the Community Emergency Response Team (CERT) Graduates.

C. Fire Department Presentation on Recent Wild Fires

Chief Lee, Fire Department, provided an overview of the recent wild fires.

Mayor Kearsley commended the response of the Fire Department.

Councilmember House asked about the threat of fire in the future. Chief Lee discussed the dangerous fuel remaining even after the rains. He urged residents to report incidents early.

Councilmember Stern thanked the Fire Department and Chief Lee for their continual communication during the fires.

Councilmember Jennings added his thanks to that expressed by the other Councilmembers. He inquired about the planning for out-of-area departments assisting in other areas. Chief Lee discussed the response plans in place. He discussed the importance of informing out-of-jurisdiction departments assisting in fires. Councilmember Jennings clarified that the plans would be provided to outside agencies assisting in Malibu fires. He expressed concern regarding the road blocks set up in the recent Corral Canyon fire. He requested that the Fire Department continue to communicate to resolve problems with allowing residents into town. He discussed the heliport in west Malibu that could be used for fire fighting. He discussed the use of reflective plaques to display spas and pools for water sources. He expressed concern with the grounding of the tankers and the need for legislative changes to allow use of tankers more quickly.

ITEM 2A PUBLIC COMMENTS

Steve Uhring thanked the people of Malibu for taking the time and effort to learn about Measure M and for going to the poles to defeat it.

Laura Rosenthal thanked the City Council on behalf of Santa Monica - Malibu Unified School District for the passage of Measure S and the City's increased contribution to the schools.

Arthur Pierson (check spelling) deferred his time to Sam Birenbaum.

Sam Birenbaum discussed his family's required vacation of their home. He discussed prosecution of his code enforcement case. He requested the Council direct City Attorney Hogin to direct Dapeer, Rosenblit and Litvak to allow them to remain in their home pending appeal.

Charleen Kabrin questioned why parks were not closed to visitors in cases of extreme fire danger. She suggested the City review the matter.

Bruce Darian discussed the importance of giving thanks to the Armed Forces. He thanked the community for voting no on Measure M.

John Mazza discussed the recent election on Measure M. He stated both sides treated each other with courtesy and believed in what they were saying. He thanked the citizens for listening to both sides and making informed decisions.

Beverly Hammond thanked the Council for their efforts to pass Measure M. She encouraged the Council to continue discussions with the Malibu Bay Company to achieve the goals of the development agreement. She requested the Council continue to consider a joint powers agreement with the Point Dume Community Services District. She urged the Council to look at the different parts of the plan and see what can be accomplished.

Nidra Winger discussed the Measure M election. She thanked the Council for supporting the measure.

Mona Loo thanked the Council for working so hard for what they believed in for the City and supporting Measure M.

David Kagon addressed the Council regarding the Malibu Bay Company Development Agreement. He suggested the Council request Regional Water Quality Control Board (RWQCB) commence a meeting with the City Council, a representative of the Malibu Bay Company, a representative of the Measure opponents, and other experts for the purpose of arriving at a course of action to

eliminate the wastewater problem in the Civic Center. He suggested that renegotiations with Malibu Bay Company include a representative of the Measure M opponents.

Anne Hoffman stated Measure M's defeat indicated everyone's desire to preserve open space. She discussed the Malibu Bay Company Development Agreement and defeat of Measure M. She stated the Council made a sincere effort to preserve open space.

Judy Newman thanked the Council for their efforts to get Measure M approved.

Miki Manez deferred her time to Georgianna McBurney.

Judy Decker deferred her time to Georgianna McBurney.

Kay Furgurson deferred her time to Georgianna McBurney.

Paul Grisanti deferred his time to Georgianna McBurney.

Barbara Kearsley deferred her time to Georgianna McBurney.

Georgianna McBurney discussed the recent failure of Measure M. She discussed potential development of the Malibu Bay Company property.

ITEM 2B COUNCIL COMMENTS

Mayor Pro Tem Barovsky thanked John Mazza for his comments. She discussed the confusion of Measure M. She stated she was proud of the proponents' and opponents' behavior during the campaign. She stated it was necessary to work with the opponents to come up with suggestions.

Councilmember Stern concurred with Mayor Pro Tem Barovsky. He requested the opponents stay to hear Item 7.B.

Councilmember House announced Veterans' Day Celebration on November 11, 2003, 11:00 a.m. at City Hall. She encouraged the community to honor the Veterans and those currently serving. She announced Household Hazardous Waste Disposal on December 13, 2003. She stated she and City Manager Lichtig toured the Pier. She discussed the Sheriff's Department response to complaints by the Birenbaums. She discussed the results of Measure M. She discussed Malibu Bay Company's statement that they were not interested in further discussions. She discussed the need to reduce commercial development and take care of problems in the City.

Councilmember Jennings stated he attended the Malibu High School Homecoming Football Game. He stated the Measure M election resolved an issue, but did not solve the problem.

Councilmember Stern asked about current Malibu Bay Company applications. Environmental and Community Development Director/Building Official Peterson stated there were applications that had been put on hold.

Mayor Kearsley discussed the Veterans' Day Celebration on November 11, 2003. He discussed the Chili Cook-Off site. He stated it was necessary to try to negotiate with Malibu Bay Company to clean up the Lagoon and Beach. He pleaded with the community to offer suggestions under Item 7.B.

ITEM 3 CONSENT CALENDAR

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to approve the Consent Calendar. The motion carried unanimously.

The Consent Calendar consisted of the following items:

- A. Previously Discussed Items
 - 1. Second Reading and Adoption of Ordinance No. 260
Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 260, extending the term of a cable television franchise and authorizing the execution of a franchise extension agreement.
- B. New Items
 - 1. Waive further reading
Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.
 - 2. Approve Warrants
Staff recommendation: Allow and approve warrant demand numbers 23355 through 23437 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 297 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$537,763.60. ADP payroll voucher numbers 6420763 – 6420779 in the amount of \$245,629.98.
 - 3. Approval of Minutes
Staff recommendation: Approve City Council meeting minutes for the Special City Council meeting held on July 9, 2003.

4. Denial of Claim for Damages filed by Los Angeles County Metropolitan Transportation Authority
Staff recommendation: Deny claim filed by Los Angeles County Metropolitan Transportation Authority.
5. Completion of Contract and Acceptance of Work – Non-motorized Trail Grant Project for Charmlee Park (Continued from October 27, 2003)
Staff recommendation: Accept the work performed by California Conservation Corps on the trail rehabilitation and the installation of Americans with Disabilities Act compliant wheelchair ramp project (2000 Bond Act) as complete and authorize the Public Works Director to record the notice of completion to release all surety agreements and contracts.
6. Amendment to the Consultant Contract with LSA Associates, Incorporated for Preparation of the Malibu Local Coastal Program
Staff recommendation: Approve Amendment No. 1 to the Agreement between the City of Malibu and LSA Associates, Incorporated (LSA) to increase the amount by \$24,700.00 for preparation of the Malibu Local Coastal Program (LCP).
7. Renewal of Employment Contracts with Administrative Services Director and Parks and Recreation Director
Staff recommendation: Authorize the City Manager to execute new employment contracts with existing Administrative Services Director Julia James and existing Parks and Recreation Director Paul Adams.

ITEM 4. ORDINANCES AND PUBLIC HEARINGS

- A. Zoning Text Amendment No. 02-001 / Negative Declaration No. 02-001 - An amendment to Title 17 Zoning Ordinance, Chapter 17.62 (Development Permits), Section 17.02.060 (Definitions), Section 17.40 (Property Development and Design Standards), and other sections as applicable to the City of Malibu Municipal Code to clarify the procedures and requirements for the processing of development permits, to amend the findings for Site Plan Review, and to refine definitions and regulations related to protection of primary view. (Continued from October 13, 2003)
Staff recommendation: Open the public hearing, consider the staff report and take public testimony. The Council should then discuss the proposed zoning text changes and direct staff to prepare any recommended changes to the proposed Zoning Text Amendment (ZTA). Based on direction from the Council, staff will prepare the appropriate resolution and ordinance to adopt the proposed Negative Declaration and approve the proposed ZTA and bring the items back to the Council for consideration.

Councilmember Stern expressed concern with possible conflicts with the Local Coastal Program (LCP). Mayor Pro Tem Barovsky concurred.

City Manager Lichtig explained that any zone text amendments would be incorporated into the LCP.

Councilmember Jennings explained that staff was looking for direction, but not necessarily taking action. He stated it was important when the matter goes forward to the Coastal Commission that the implementation measures reflect the City's thinking.

Senior Planning Consultant Gorham presented the staff report.

Robert Edie expressed concern regarding the proposed removal of the term "maximum extent feasible" in regard to primary view protection.

John Mazza stated the proposed zone change was meant to be a one-stop approval process. He stated the proposed changes would not jive with the LCP. He stated public view had been eliminated from view protection provisions. He suggested delaying the matter until the LCP was in place. He expressed concern regarding the lack of institutional memory in the Planning Department.

Lisa Shaffer deferred her time to Lucille Keller.

Lucille Keller, representing Malibu Township Counsel, indicated opposition to the proposed zone text amendments. She discussed the proposal for remedial grading, retaining wall height, and removal of seawalls. She discussed primary view protection and requested the current language be retained. She indicated support for the proposed amendment to the view corridor. She stated that proposed changes to the stringline rule would conflict with the LCP language.

Councilmember Stern asked about limitations on retaining walls. Senior Planning Consultant Gorham explained that retaining walls that were part of the structure were not currently limited in height.

Ms. Keller stated she was not concerned about retaining walls attached to a house. She expressed concern regarding 18-foot retaining walls and their visual impact and potential danger.

Norm Haynie expressed disappointment in the comments by public speakers. He explained that remedial grading occurred when material was removed and replaced to increase shear strength. He stated the Coastal

Commission has never followed a strict policy on stringline. He stated he did not see the need for site plan poles if the Planning Manager agreed that it would not have any view blockage impact. He stated the Coastal Commission had no discretion to approve a one-year extension or to not approve it. He distributed photographs of walls that were higher than 42 inches, but which provide protection for the homeowner.

Charleen Kabrin discussed the lack of time to address the issues. She expressed concern about legal challenges that might come up due to the proposed administrative review procedures. She asked whether the Planning Manager's decision was appealable and what type of notice was provided. She expressed concern regarding remedial grading. She discussed coastal bluff setback and the need to ensure safety. She discussed neighborhood character and neighborhood standards.

Patt Healy, representing Malibu Coalition for Slow Growth, requested the Council discuss each item individually. She stated the zoning changes should not apply to commercial property. She recommended the Planning Commission review any proposed reduction in ESHA setback. She requested clarification on the definition of trellis. She discussed damage caused by remedial grading and suggested it be reviewed by the Planning Commission. She discussed problems with excessive retaining walls. She suggested the entire Code be reviewed instead of loosening the standards. She stated that she learned from the Measure M situation that people really want quality of life protected.

Councilmember Stern asked if Ms. Healy was requesting any retaining wall over six feet be reviewed by the Planning Commission. Ms. Healy clarified that she wanted to prevent situations such as the Sweeney Road issue. She suggested retaining the current Code.

Mayor Pro Tem Barovsky stated the proposed zone text amendments went before the Planning Commission. Ms. Healy clarified that she was requesting current zoning codes be reviewed by the Planning Commission.

Bruce Schaffer commended the Council for their vision on Measure M. He discussed grading on slopes. He discussed view protection and proposed amendments to primary view protection.

Kay Furgurson discussed the stringline modification process. She stated it was necessary to have the Planning Director review anomalies. She expressed concern regarding the time limitation of six months.

Judy Decker deferred her time to Anne Hoffman.

Anne Hoffman discussed the need for permit streamlining. She discussed permit fees for various developments. She expressed frustration with the ESHA setback. She discussed the hearings held on the proposed zone text amendments.

Councilmember Jennings clarified that administrative and site plan reviews would be good for three years with one-year extensions, so long as there are no changes in circumstances and also an extension for appeals or litigation. He stated the rules under Malibu Municipal Code Section 17.16.020 applied only to properties that do not require a Conditional Use Permit (CUP) or Coastal Development Permit (CDP).

Mayor Pro Tem Barovsky stated this does not apply to commercial developers because all commercial development would require CUPs.

Councilmember House asked if there was currently a cubic yard limitation on remedial grading. Senior Planning Consultant Gorham stated there was currently no limitation on remedial grading. Councilmember House stated this zone text amendment provided limitations. She discussed the need for standards on housing on the beach side of PCH. She discussed the use of bulkheads, revetments and seawalls. She stated it was necessary to support comments with good, scientific evidence. She stated it was important to utilize the Fire Department standards when considering grading. She asked if remedial grading standards will limit the size of a home.

Councilmember Jennings stated he was not comfortable with including bulkheads and seawalls in the list of projects allowed under administrative review. Senior Planning Consultant Gorham explained that the projects listed were currently listed under plot plan review, but not spelled out in the Code. He stated that no new types of projects were added. Councilmember Jennings stated the rules were staying the same, but that some items were being shifted from one category to another. He stated he was not aware that seawalls and bulkheads could be done under plot plan review.

Mayor Pro Tem Barovsky discussed the stringline policy followed by the Coastal Commission.

Mayor Kearsley asked how the proposed changes differed from the General Plan. Mr. Edie stated that removing "maximum extent feasible" lessened the burden to protect existing views.

Environmental and Community Development Director/Building Official Peterson explained that “maximum extent feasible” was not measurable and very subjective. He stated the intent was to make the Code more reasonable and more enforceable.

Senior Planning Consultant Gorham discussed the intent of the view protection.

RECESS Mayor Kearsley called a recess at 9:15 p.m. The meeting reconvened at 9:27 p.m. with all Councilmembers present.

The Council discussed Section 17.62.030A(2). Councilmember Jennings discussed Mr. Haynie’s comments regarding steps. He expressed concern regarding the remedial grading issue.

Councilmember House questioned the restriction of 5,000 cubic yards of grading. Senior Planning Consultant Gorham stated there was currently no limitation on remedial grading. He stated that the idea was to put some limits on remedial grading. He explained that site plan review would review grading between 5,000 and 15,000 cubic yards and provide notice to neighbors.

CONSENSUS

By consensus, the Council directed staff to incorporate Section 17.62.030A(2) into the Ordinance.

Councilmember Jennings discussed various definitions of remedial grading, including that in Section 17.14.040A9E.

CONSENSUS

By consensus, the Council directed staff to bring back language for Section 17.14.040A9E defining the level of remedial grading that would be subject to the permitting process, requiring Planning discretionary review for grading up to 5,000 cubic yards, over 5,000 cubic yards would require site plan review and anything over 15,000 cubic yards would require a variance, using the definition of remedial grading contained in Section 4.14.040A9, and to further change the exception regarding remedial grading to eliminate the “Catch 22” situation.

Councilmember Jennings explained that there was problem with leaving remedial grading between 5,000 and 15,000 cubic yards under site plan review. City Attorney Hogin suggested establishing a separate section to address the problems.

The Council discussed the proposed modifications to Section 17.62.030A(7).

CONSENSUS

By consensus, the Council directed staff to work in language so that the Code changes would refer to retaining walls behind a house.

The Council discussed Section 17.62.030B.

CONSENSUS

By consensus, the Council approved the proposed language for Section 17.62.030B and to bring back examples and a list of exceptions.

The Council discussed Sections 17.62.030C and 17.62.030D.

CONSENSUS

By consensus, the Council approved the proposed language for Sections 17.62.030C and 17.62.030D.

The Council discussed Section 17.62.030E.

CONSENSUS

By consensus, the Council approved the proposed language for Section 17.62.030E, including that the expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.

The Council discussed Section 17.62.030F.

CONSENSUS

By consensus, the Council agreed that there would be no limit on extensions as long as no conditions had changed.

The Council discussed Section 17.62.030G. Councilmember Jennings indicated there was a conflict between Sections 17.04.160 – 17.04.210 and Sections 17.04.220 – 17.04.230.

CONSENSUS

By consensus, the Council directed staff to remove the reference to Chapter 17.04.220.

The Council discussed Sections 17.62.040A(5), 17.62.040A(7), and 17.62.040A(8).

CONSENSUS

By consensus, the Council approved the proposed language in Sections 17.62.040A(5), 17.62.0040A(7) and 17.62.040A(8).

The Council discussed Sections 17.62.040A(9).

Councilmember House expressed concern regarding the Coastal Commission's opinion on the matter.

Councilmember Jennings stated he did not want to go there.

CONSENSUS

By Consensus, the Council directed staff to delete Section 17.62.040A(9).

The Council discussed Section 17.62.040F.

CONSENSUS

By consensus, the Council approved the language, but agreed not to limit extensions as long as conditions remain the same.

The Council discussed proposed language for Section 17.62.040D(1).

CONSENSUS

By consensus, the Council agreed to use the Planning Commission's and staff's recommendation.

The Council discussed Section 17.62.040D(2).

CONSENSUS

By Consensus, the Council approved the Planning Commission's and staff's language.

The Council discussed Section 17.62.040D(3).

CONSENSUS

By consensus, the Council approved the proposed language as approved by the Planning Commission adding a development standard.

The Council discussed Section 17.62.040D(4).

CONSENSUS

By consensus, the Council deferred the matter and directed staff to come back with additional information.

The Council discussed Section 17.62.040D(5).

CONSENSUS

By Consensus, the Council agreed that the project did not affect solar access, as defined by staff.

CONSENSUS

By consensus, the Council agreed to defer the remainder of the Zoning Text Amendments.

- B. APPEAL NO. 03-016 - An Appeal of the Planning Commission's denial of Appeal No. 03-013 appealing the Planning Manager's approval of Minor Conditional Use Permit No. 02-013 and Plot Plan Review No. 02-197 for the installation of a wireless telecommunications facility on an existing utility pole located within the public right-of-way adjacent to 28815 Bison Court in the Rural Residential (RR-1) Zone. APPELLANT: Ken Miller; APPLICANT: Sprint PCS; PROPERTY OWNER: City of Malibu Public Right-of-Way; LOCATION: Within the public right-of-way adjacent to 28815 Bison Court

Staff recommendation: Continue the public hearing to the Regular City Council meeting of December 8, 2003.

Upon approval of the agenda, this item was continued to the Regular City Council Meeting on December 8, 2003.

- C. Appeal No. 03-014 - An Appeal of the Planning Commission's denial of Appeal No. 03-008 appealing the Planning Manager's approval of Minor Conditional Use Permit No. 02-009 and Plot Plan Review No. 02-180 for the installation of a wireless telecommunications facility on an existing utility pole located within the public right-of-way adjacent to 28840 Boniface Drive in the Rural Residential (RR-1) Zone. APPELLANT: Robert Carmichael; APPLICANT: Sprint PCS; Property OWNER: City of Malibu Public Right-of-Way; LOCATION: Within the public right-of-way adjacent to 28840 Boniface Drive

Staff recommendation: Continue the public hearing to the Regular City Council meeting of December 8, 2003.

Upon approval of the agenda, this item was continued to the Regular City Council Meeting on December 8, 2003.

ITEM 5. OLD BUSINESS

None.

ITEM 6. NEW BUSINESS

None.

ITEM 7. COUNCIL ITEMS

A. Council Appointments to the Civic Center Way Blue Ribbon Committee (Continued from October 27, 2003).

Councilmember Stern appointed Mark Olson to the Civic Center Way Blue Ribbon Committee.

B. Malibu Bay Company Development Agreement (Mayor Kearsley)

Requested Action: Mayor Kearsley is requesting the Council direct the City Manager to invite the Malibu Bay Company to participate in new negotiations about the properties contained in the recently rejected development agreement between the City and the Malibu Bay Company.

Mayor Kearsley suggested directing the City Manager to draft a letter to invite the Malibu Bay Company to discuss future negotiations and inviting the Planning Commission, Council, and representatives of the Malibu Community Action Network (CAN) to sign on to the letter.

Mayor Pro Tem Barovsky stated that if the opponents do not sign on, it would be the Council asking. She stated she would find it incomprehensible if the opponents would not sign on. She indicated that the Planning Commission does not meet until Monday and suggested that City Manager Lichtig call the Planning Commissioners individually.

City Attorney Hogin stated it sounded like Council wanted to draft a letter and ask each of the five Planning Commissioners to sign it.

Mayor Pro Tem Barovsky stated that time is of the essence to move forward.

Mayor Pro Tem Barovsky asked Mr. Mazza to react to the suggestion.

John Mazza indicated he was in favor of negotiating with Malibu Bay Company. He stated it was the opinion of Malibu CAN that there was a better deal to be had.

Mayor Kearsley stated it was necessary to first get Malibu Bay Company back to the table.

Mayor Pro Tem Barovsky asked if Mr. Mazza would take the matter back to the Malibu CAN and see if they would sign on.

Mr. Mazza stated he could do so tomorrow.

Councilmember Stern asked why the Malibu Bay Company would negotiate unless all parties were together. He stated Richard Carrigan should also be included. He stated he hoped that they were right that Malibu Bay Company would renegotiate. He encouraged the opponents to read the letter and make the necessary changes to get the Malibu Bay Company to join in renegotiations.

Councilmember House indicated she hoped that Malibu Bay Company will come back. She requested a letter from "No on M" to come up with a plan or vision that could be followed.

Mr. Mazza stated he felt it would be better to come back with a plan that everyone likes.

Mayor Pro Tem Barovsky questioned whether MBC would come back at all.

CONSENSUS By consensus, the Council directed the City Manager to draft a letter inviting the Malibu Bay Company to participate in discussions about the properties contained in the recently rejected development agreement between the City of Malibu and the Malibu Bay Company with review by the Planning Commission, Malibu CAN and City Council, accepting any and all revisions.

ADJOURN At 10:58 p.m., Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of
the City of Malibu on January 12, 2004.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)